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negligence, there can be no recovery under the federal Employers' Liability Act (Act April 22, 1908, c. 149, 35 Stat. 65 [U. S. Comp. St. 1913, §§ 8657-8665.]).

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 163; Dec. Dig. § 97.\* 9 Va.-W. Va. Enc. Dig. 667.]

Error to Circuit Court, Rockingham County.

Action by John Shiffett's administratrix against the Chesapeake Western Railway. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded.

*D. O. Dechert* and *J. B. Stephenson*, both of Harrisonburg, for plaintiff in error.

*John Paul* and *Chas. A. Hammer*, both of Harrisonburg, for defendant in error.

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CHESAPEAKE & OHIO RY. CO. *v.* BAYLOR.

Nov. 11, 1915.

[86 S. E. 847.]

**1. Damages (§ 112\*)—Fire—Standing Timber—Measure of Damages.**—Where standing timber belonging to plaintiff was damaged by fire set by defendant railroad company's locomotive, the measure of damages was the difference between the value of the timber immediately before and immediately after the fire.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 281-283; Dec. Dig. § 112.\* 4 Va.-W. Va. Enc. Dig. 191.]

**2. Trial (§ 235\*)—Standing Timber—Fire—Measure of Damages—Instructions.**—The fact that, in an action for damage to standing timber, plaintiff's witnesses were qualified to testify to its value immediately after the fire set out by defendant railway company's locomotive, while defendant's witnesses examined the timber for the first time several months thereafter, did not render an instruction that the measure of damages was the difference in value between timber as it was immediately before and immediately after the fire erroneous, as destroying the force of defendant's testimony.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 539-541, 543-548, 551; Dec. Dig. § 235.\* 7 Va.-W. Va. Enc. Dig. 718.]

**3. Trial (§ 256\*)—Proper Instructions—Prejudicial Effect—Remedy.**—The instruction being proper, defendant's remedy for any prejudicial effect it might have because of the particular situation was by a request for an explanatory charge.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 628-641; Dec. Dig. § 256.\* 7 Va.-W. Va. Enc. Dig. 707.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Albemarle County.

Action by James B. Baylor, trustee for Maria R. Baylor, against the Chesapeake & Ohio Railway Company. From a judgment for plaintiff, defendant brings error. Affirmed.

*D. H. & Walter Leake*, of Richmond, for plaintiff in error.

*Carter Braxton*, of Staunton, for defendant in error.

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CHESAPEAKE & O. R. CO. *v.* CARNAHAN.

Nov. 11, 1915.

[86 S. E. 863.]

**1. Jury (§ 32\*)—Number of Jurors—Federal Employers' Liability Act—Actions Under.**—The federal Employers' Liability Act, as amended in 1910 (Act April 22, 1908, c. 149, 35 Stat. 65, as amended by Act April 5, 1910, c. 149, 36 Stat. 291 [U. S. Comp. St. 1913, §§ 8657-8665]), provides in section 6 (section 8662) that federal courts shall have concurrent jurisdiction with state courts of cases arising under the act and that no such case brought in a state court shall be removed to the federal court. Const. U. S. Amend. 7, declares that in suits at common law, where the value in controversy shall exceed \$20, the right to trial by jury shall be preserved. Code 1904, § 3106, provides for a civil jury of 7. Held, that an action under the federal Employers' Liability Act might be tried by the civil jury of 7 for the enforcement of such federal rights was given to the state court, whose law governs, and the amendment applies only to federal courts.

[Ed. Note.—For other cases, see Jury. Cent. Dig. §§ 221-225; Dec. Dig. § 32.\* 9 Va.-W. Va. Enc. Dig. 6.]

**2. Jury (§ 11\*)—Jury Trial—Amendments.**—Const. U. S. Amend. 7, preserving inviolate the right to trial by jury as at common law, is a limitation only on the administration of law in the federal courts, and not of the state courts, and the fourteenth amendment does not apply it to the state courts.

[Ed. Note.—For other cases, see Jury. Cent. Dig. §§ 19-24; Dec. Dig. § 11.\* 9 Va.-W. Va. Enc. Dig. 6.]

**3. Damages (§ 216\*)—Instructions—Misleading Instructions.**—In a personal injury action, where the court orally charged the jury that they could not consider the possibility of plaintiff's promotion or profits from collateral undertakings, a charge that in assessing the damages the jury might consider plaintiff's mental anguish, bodily injury, pecuniary loss, loss of capacity for work, and its effect on his

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.